IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 641 OF 2004.

Shri Cutchi Visa Oswal Derawasi Jain Pathshala, through its Chairman Virchand Koonverji Korani having its office at 84, Samuel Street, Mumbai- 400 009. ... Appellant.

V/s.

1. Shri Cutchi Visha Oswal Derawasi Jain Mahajan, through its Chairman, Popatlal Bharmal Sah, having its office at 226/232, Narsi Natha Street, Mumbai- 400 009.

2. The Joint Charity Commissioner, Mumbai. ... Respondents.

A.K.Abhyankar with Mrs.M.D'Souza i/b. Kishore Dalal & Co. for the appellant.

Navin Parekh with Z.A.Jariwala i/b. Thakore Jariwala & Associates for respondents.

CORAM : V.C.DAGA, J.

RESERVED ON : 13th August 2004.

PRONOUNCED ON: 14th September 2004.

JUDGMENT :

. This appeal at the instance of Shri Cutchi Visa Oswal Derawasi Jain Pathshala ("Pathshala Trust" for short) is directed against the order dated 17th June, 2004 passed by the City Civil Court at Bombay while dismissing Notice of Motion No.809 of 2004 moved in S.C.Suit No.552 of

2004, whereby prayer for temporary injunction to restrain defendant No.1/ respondent No.1 herein; - Shri Cutchi Visha Oswal Derawasi Jain Mahajan ("Mahajan Trust" for short) and their trustees from interfering with the management, administration and appointment of trustees came to be rejected.

The Factual Matrix :
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2. The factual matrix disclosed by the appellant reveals that the appellant/ original plaintiff - Pathshala Trust is an Educational Trust registered under the Bombay Public Trust Act, 1950 ("Trust Act" for short) at No.E-539 running two schools. Respondent No.1/ original defendant No.1 - Mahajan Trust is also a public Trust duly registered under the Trust Act engaged in religious activities.

3. The appellant - Pathshala Trust alleged that it is governed by the trust deed dated 19th July, 1905, rules and regulations made thereunder. That respondent No.1 - Mahajan Trust is an independent Trust. It is governed by its own independent constitution, rules and regulations. It has no control over the management of the appellant - Pathshala Trust. That mode of succession of the appellant - Pathshala Trust to the trusteeship is as

per clause-17 of the trust deed dated 19th July, 1905; which provides that trustees on their Trust are to be appointed by the Cutchi Visa Oswal Deravasi Jain Caste ("CVOD Jain Caste" for short).

4. The appellant - Pathshala Trust claimed that some time in the year 1985 the trustees of the respondent No.1 - Mahajan Trust had approached Bombay High Court for getting its scheme amended so as to exercise their right to control, manage and administer the appellant - Pathshala Trust. According to them, appellant - Pathshala Trust was not a party to the said proceedings before the High Court as such they were required to seek directions from the then Charity Commissioner vide their letter dated 4th October, 1985 so as to confirm their status vis-a-vis respondent No.1 - Mahajan Trust. According to them, in reply, the then Deputy Charity Commissioner Mr.R.B.Aragade, vide his letter dated 18th November, 1985 informed the appellant - Pathshala Trust that both Trusts were independent of each other. The appellant - Trust, thus, claimed that, in the light of the said reply, they were required to amend their constitution in the meeting of the 'CVOD Jain Caste' held on 4th October, 1995. The amended constitution was to take effect from 1st February, 1996. Accordingly, the same has taken

effect for the said date. At this juncture, it will not be out of place to mention that, according to the appellant - Trust, the the "CVOD Jain Caste" means entire Jain community of Mumbai. In their submission, the word "Caste" appearing therein does not have any reference to Mahajans or Mahajan Trust.

5. The appellant - Pathshala Trust further claimed that vide their letter dated 18th January, 1996 they did submit copy of the amended constitution along with copy of the old constitution with translation thereof in English to report change to the Deputy Charity Commissioner, Bombay for being recorded in the register of Bombay Public Trusts vide its covering letter dated 18th January, 1996.

6. The appellant - Pathshala Trust further claimed that the Chairman and Honorary Secretary viz. V.K.Korani of the appellant - Trust, by his letter dated 3rd April, 1996, addressed to the trustees of the respondent No.1 - Trust, had brought to their notice that the appellant - Pathshala Trust being governed by the Trust Deed dated 19th July, 1905, the trustees of the Pathshala Trust have been selected and nominated by the Jain Caste as such respondent No.1 - Mahajan Trust has no *locus* to interfere with their affairs. The very same stand

was reiterated by them in their another letter dated 7th March, 2000 addressed to the respondent No.1 - Mahajan Trust with further request to delete the clauses from the constitution showing their control and management over the appellant - Pathshala Trust but their request did not yield any result.

7. The appellant - Pathshala Trust alleged that they came across an item published in the magazine published by respondent No.1 - Mahajan Trust in Cutchi Visa Oswal Jain Khabar Patrika ("Khabar Patrika" for short) dated 14th June, 2003 as well as corrigendum dated 22nd June, 2003 stating that five trustees of the respondent No.1 - Mahajan Trust were appointed for the management of Palla Gully School. Consequently, appellant - Pathshala Trust claimed to have again approached the office of the Deputy Charity Commissioner vide their letter dated 16th June, 2003 to seek direction regarding status of the Pathshala Trust. Reliance was placed on correspondence between the appellant and respondent No.1 - so as to claim and reiterate their independent status.

8. The appellant - Pathshala Trust further claimed that they again came across one more notice in Khabar Patrika dated 10th October, 2003; wherein

Agenda No.3 of the said notice recorded that a meeting of Mahajan Trust was called on 11th October, 2003 to fix up the programme for election of five trustees to be appointed on the appellant - Pathshala Trust and also for appointment of election officer/committee to conduct election of the trustees. This was objected by the appellant - Pathshala Trust vide their letter dated 11th October, 2003 and request was made for a joint meeting of two Trusts to solve the doubts and settle the matter amicably.

9. The appellant - Pathshala Trust alleged that instead of fixing a meeting with the appellant - Trust, the respondent No.1 - Mahajan Trust, by its letter dated 18th October, 2003, questioned the status of the trustees of the appellant - Pathshala Trust. That, on being approached, the Deputy Charity Commissioner informed their office bearers that in order to solve dead-lock between them they should take legal advise and act in accordance with law.

10. According to the appellant, again they came across another news item published by respondent No.1 - Mahajan Trust on 14th January, 2004 regarding election programme for appointing

trustees to manage CVOD Jain High School and Shree Purbai Jain Kanya Shala run by them. In view of these series of developments, the appellant - Pathshala Trust claimed to have entertained a belief that respondent No.1 - Mahajan Trust is attempting to grab the control, take charge and interfere with the administration and management of the Pathshala Trust as such they were forced to file S.C.Suit No.552 of 2004 in the City Civil court at Bombay praying for order of permanent injunction to restrain respondent No.1 - Mahajan Trust and its trustees from interfering with the management, administration and appointment of the trustees of the appellant - Pathshala Trust. The appellant also claimed to have taken out Notice of Motion No.809 of 2004 for interim relief in terms of prayer clauses incorporated therein.

11. On being noticed, the respondent No.1 - Mahajan Trust appeared through counsel and opposed notice of motion taken out by them for interim relief. The respondent No.1 - Mahajan Trust by their counter affidavit sought to place reliance on certain documents placed on record in support of their contentions. The appellant claimed to have filed their rejoinder on 8th April, 2004 to reiterate their stand and to challenge the authority

of respondent No.1 - Mahajan Trust to interfere with their management, administration and also challenged their right to appoint trustees of the appellant - Pathshala Trust.

12. Learned Judge of the Bombay City Civil Court, Mumbai vide his initial order dated 9th February, 2004, was pleased to grant ad-interim relief, whereby respondent No.1 - Mahajan Trust was permitted to hold election with direction not to declare election results. Ultimately, on 17th June, 2004, after hearing the parties to the suit and notice of motion, learned trial Court vide its order dated 16th June, 2004 was pleased to dismiss the notice of motion with costs quantified in the sum of Rs.1,500/-, which was directed to be paid by the trustee Mr.V.K.Korani from his pocket to the respondent No.1 - Trust.

13. Being aggrieved by the aforesaid order, the appellant has invoked appellate jurisdiction of this Court to challenge the order of the trial Court dated 17th June, 2004 refusing to grant temporary injunction to restrain respondent No.1 - Mahajan Trust from interfering with the management, administration and appointment of trustees of the appellant - Pathshala Trust and asserted that both

the Trusts are independent; one being purely an educational trust governed by the Trust Deed dated 19th July, 1905, whereas another being purely a religious trust governed by the scheme framed by the High Court in the year 1941. The respondent No.1 - Mahajan Trust appeared on caveat to oppose the instant appeal.

Events Pending Appeal :
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14. At the outset, Mr.Abhyankar, learned counsel for the appellant, in order to prove amendment to the constitution of the appellant - Pathshala Trust, sought to place reliance on one letter bearing No.212/1995-96 dated 18th January, 1996, said to have been written under the signature of one Mr.A.S.Khairat, to the Deputy Charity Commissioner, Mumbai, whereby the appellant - Pathshala claimed to have forwarded copy of the minutes of the meeting, certified copy of old constitution with amended constitution which was to take effect from 1st February, 1996. The carbon copy/ office copy of the said letter with acknowledgment under the seal of the office of the Deputy Charity Commissioner dated 16th February, 1996 was pressed into service to establish purported intimation of change in the constitution of the

appellant - Pathshala Trust to the office of the Deputy Charity Commissioner. This acknowledgement, prima facie; did not inspire judicial confidence of this Court. Consequently, the Deputy Charity Commissioner was directed to report as to whether or not the said letter dated 18th January, 1996 was received by his office and whether or not the entry of this letter finds place in their Inward Register. He was also directed to forward zerox copy of that particular page of the Inward Register with relevant inward entry, if it exist.

15. Learned counsel for the appellant, during the course of hearing had also produced one bunch of documents said to have been certified copies of entire proceedings in respect of the appellant - Pathshala Trust issued by the office of the Deputy Charity Commissioner under the signature of Superintendent (J), Public Trusts Registration Office, Mumbai said to be duly certified on 16th February, 2004. This bunch of papers at the end was attached or accompanied with four printed zerox pages bearing round seal of the office of the Deputy Charity Commissioner purported to be the amended copy of the constitution of the appellant - Pathshala Trust. These four printed pages did not bear any certificate certifying its authenticity as

such reasonable apprehension about its genuineness and authenticity was raised by learned counsel for the respondent No.1 - Mahajan Trust. In order to clear the doubt, the Charity Commissioner was directed to submit his report as to whether or not certified copies including last four pages referred to, said to be an amended constitution of the Pathshala Trust, were issued by his office and whether it forms part of the record of the appellant - Pathshala Trust maintained by his office. The bunch of papers including letter dated 18th January, 1996 produced at the time of hearing were retained on record and kept in sealed cover. At the same time, parties to the appeal were put on notice that considering the serious allegations, counter allegations and rival submissions, in the backdrop of the issues involved, the appeal would be finally heard and disposed of at the stage of admission itself. The trial court was directed to remit record and proceedings to this Court.

16. The Deputy Charity Commissioner, Greater Bombay forwarded his report dated 22nd July, 2004, *inter alia,* stating that the search of the inward register for the period of January, 1996 was taken but the said register of the period from 13th October, 1995 to 30th April, 1996 found to have been

destroyed under the routine destruction of record as per the order of the Charity Commissioner. He also forwarded the papers available with the office of the Deputy Charity Commissioner with respect to the appellant - Pathshala Trust, in which letter dated 18th January, 1996 did not find place. Report of the Deputy Charity Commissioner made it clear that there was no trace as to how the last four pages in Gujarathi language said to be the amended constitution came to be attached to the record and proceedings of the appellant - Pathshala Trust, which do not bear any seal as mark of the office of the Charity Commissioner. There is no date on the said document. There is no mention as to how this document found its entry in the record of the Deputy Charity Commissioner. The Deputy Charity Commissioner reported that it is not traceable as to how this document came to be attached to the record and proceedings of the appellant - Pathshala Trust.

17. The absence of letter dated 18th January, 1996 from record of the Deputy Charity Commissioner was put to the learned counsel for the appellant - Trust to seek his explanation. He replied that the papers forwarded by the office of the Deputy Charity Commissioner were incomplete. Consequently, again an order was passed by this Court on 28th July, 2004

directing the Deputy Charity Commissioner to inform this Court as to whether any other record, other than the record forwarded to this Court, was still available in his office with respect to the appellant - Pathshala Trust. The Deputy Charity Commissioner submitted his report dated 3rd August, 2004 and forwarded all other remaining papers including change report proceedings pending for enquiry before him with respect to the appellant - Trust. The said change report was filed for the first time by the appellant - Pathshala Trust on 23rd June, 2004 i.e. after the impugned order was passed by the trial Court.

18. With the aforesaid material on record and with the assistance of the record and proceedings forwarded by the trial Court, this appeal was heard finally by consent of parties at the stage of admission itself.

Contours of Rival Submissions :
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19. Mr.Abhyankar, learned counsel in a persuasive address on behalf of the appellant - Trust reiterated the facts leading to the filing of the suit as disclosed while sketching factual matrix

of this case in the opening part of this judgment. Mr.Abhyankar submits that the Pathshala Trust and Mahajan Trust are two duly registered independent public Trusts established to achieve two different objects. According to him, the appellant - Pathshala Trust is a purely educational Trust governed by the Trust Deed dated 19th July, 1905, whereas respondent No.1 - Mahajan Trust is purely religious Trust governed by the scheme framed by the High Court in the year 1941. According to him, both Trusts are functioning independent of each other and respondent No.1 - Mahajan Trust cannot have control over the management of the appellant - Pathshala Trust. According to him, the only link between the two Trusts is that, as per the scheme framed by the High Court, the trustees of respondent No.1 - Mahajan Trust have to allow portion of the Mahajanwadi at Palla Gully to be used for running schools by the appellant - Pathshala Trust for boys and girls.

20. In the submission of Mr.Abhyankar, the then Deputy Charity Commissioner - Mr.Argade, vide his letter dated 18th November, 1985 had unequivocally clarified that both the Trusts are independent of each other and that an attempt on the part of respondent No.1 - Trust in approaching High

Court, for getting its scheme amended, in such a way that management and administration of the appellant - Pathshala Trust could be controlled by respondent No.1 - Mahajan Trust was unwarranted, improper and not in the interest of the appellant - Trust. He further submits that the then Deputy Charity Commissioner in the said letter had further clarified that the administration and management of the appellant - Trust was governed by the trust deed and rules and regulations which were quite adequate and that there was no necessity to substitute a new mode of succession in place of a mode of succession provided in the trust deed of 1905. In his submission, the amended scheme was nothing but an attempt to grab the administration and management of the appellant - Trust and that new mode of succession could not have been thrust on the trustees of the appellant - Trust, when they themselves did not feel it necessary to change the mode of succession as laid down in the trust deed of 1905. He also placed strong reliance on the letter dated 18th November, 1985 issued by the office of the Deputy Charity Commissioner reiterating the views expressed in the said letter.

21. Mr.Abhyankar further urged that letter dated 18th November, 1985 issued by the then Deputy

Charity Commissioner was brought to the notice of respondent No.1- Trust by the appellant - Trust vide its letters dated 3rd April, 1996 and 7th March, 2000 but no steps were taken by them to challenge the said letter as such it is necessary to infer that respondent No.1- Mahajan Trust admitted the contents of the said letter and, thereby, admitted that the management and administration of the appellant - Trust could not be controlled by it. He further submits that the trial Court misinterpreted the word "Caste" appearing in clause-17 of the trust deed of 1905 which provides that trustees of the appellant - Trust shall be appointed by the "CVOD Jain Caste". In his submission, the word "Caste" means a community i.e. a Jain community of Bombay as a whole. In the light of this interpretation, Mr.Abhyankar submits that it could not have been held by the trial Court that it was the respondent No.1 - Trust which has the powers for appointment of trustees of the appellant - Trust. He further submits that based on his interpretation it ought to have been held by the trial Court that respondent No.1 - Trust has no power and right over the management and administration for appointment of trustees of the appellant - Trust in any manner whatsoever. He further submits that on several occasions the appellant intimated and put the

respondent No.1- Trust on notice that they do not have right over the management and administration of the appellant - Trust and also asserted that they were not parties to the scheme framed by the High Court as such it is not binding upon them.

22. Mr.Abhyankar further contends that the conduct of respondent No.1 - Trust in publishing item in Khabar Patrika on 14th January, 2004 regarding election programme of the schools run by the appellant - Trust was unwarranted and revealed an attempt on the part of respondent No.1 - Mahajan Trust to grab control and take over charge, management and administration with right to make appointment of trustees of the appellant - Pathshala Trust.

23. Mr.Abhyankar in his oral submissions asserted that the constitution of the appellant - Trust was amended and the change was reported to the Registrar of Bombay Public Trusts vide letter dated 18th January, 1996. In his submission, it was for the office of the Deputy Charity Commissioner to initiate necessary proceedings to consider the validity of the reported change.

24. Mr.Abhyankar further argued that once the change is effected, it immediately operates notwithstanding pendency of the inquiry into the reported change until reported change is not finally rejected. It is only required to be reported to the Charity Commissioner within 90 days under section 22 of the Trust Act. In his submission, there is no requirement of law that the change must first be accepted, then only it is to be acted upon. He submits that the change immediately takes effect. It comes into effect as soon as it is effected. He placed reliance on the judgment of the Apex Court in the case of Managing Committee, **Khalsa Middle School v. Mohinder Kaur**, 1993 Supp (4) SCC 26 in support of his submission and compared the scheme of section 22 of the Trust Act with that of section 18 of the Companies Act. In his submission, both provisions are more or less similar. Mr.Abhyankar, while taking assistance of the Apex Court judgment in the case of Managing Committee, **Khalsa Middle School v. Mohinder Kaur** (supra) tried to draw and extend analogy of section 18 of the Companies Act to the provision of section 22 of the Trust Act and tried to press into service the principles laid down by the Apex Court in the said judgment in the following words.

> "..... In the absence of any requirement in the Societies Registration Act that the alteration in the Rules and Regulations must be registered with the Registrar, it cannot be held that registration of the amendment is a condition precedent for such an alteration to come into effect...."

25. Mr.Abhyankar to buttress his submissions relied upon the judgment of learned single Judge of this Court in the case of **Chembur Trombay Education Society v. D.K.Marathe**, 2002 (3) BCR 161 to contend that the above view has been accepted by learned single Judge of this Court. He, thus, tried to contend that the appellant - Trust is an independent Trust. It has amended its constitution. The amendment/change has been reported to the office of the Deputy Charity Commissioner under section 22 of the Trust Act. It has taken immediate effect as such respondent No.1 - Trust cannot have any control over the management and working of the appellant - Trust and its attempt to manage and/or interfere with the management of the appellant - Trust by foisting the trustees on them is unwarranted, illegal and without any authority of law as such the appellant is entitled to succeed in the appeal and entitled to contend that appellant - Trust has made out prima facie case as such interim injunction as

prayed in the notice of motion must follow in their favour.

Per Contra :
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26. Mr.Navin Parekh, learned counsel for respondent No.1 in his well-searched submission challenged very basic right of the appellant - Trust to prosecute appeal and also to maintain suit on factual as well as legal grounds. He submits that the suit is not maintainable; firstly, for want of all trustees being parties to the suit; secondly; for want of permission of the Charity Commissioner under section 51 read with section 50 of the Trust Act; and thirdly, for want of resolution of the appellant - Trust to file suit and to permit or authorise Mr.V.K.Korani to engage lawyer, verify and present the plaint in question.

27. Mr.Parekh, turning to the undisputed facts, submits that last election of the appellant - Pathshala Trust was held on 5th May, 1975 under the auspices of respondent No.1 - Mahajan Trust. That the trustees were elected in the said election for the period of three years. They were: Mr.Korani; Mr.Mota; Mr.Haria along with two others, who have since expired. That in the year 1979 fresh

elections could not be held. The term of the very same trustees was extended by another three years pursuant to the resolution passed by respondent No.1 - Mahajan Trust on 21st February, 1979. The said change under section 22 of the Trust Act was reported to the office of the Charity Commissioner on 21st March, 1979 along with consent letter of all the trustees by Mr.V.K.Korani himself showing extension of the tenure from 1979 to 1981. That Mr.Koarni by his positive conduct recognised the control and authority of respondent No.1 - Mahajan Trust right from the year 1981 to 2003 as reflected in number of documents available on record. According to Mr.Parekh, Mr.Korani has also recognised the power of respondent No.1 - Mahajan Trust to conduct elections of the appellant - Trust on number of occasions. He, thus, submits that the contentions of the appellant, contrary to their conduct, are liable to be rejected.

28. Mr.Parekh further submits that respondent No.1 - Trust in a meeting held on 29th May, 2003 resolved to appointing five members on the managing committee of the appellant - Trust and also forwarded their names to it by letter dated 30th May, 2003. Mr.Korani himself by his letter dated 10th June, 2003 acknowledged receipt of the said

letter dated 30th May, 2003 and expressed his gratitude and happiness over his appointment as a Trustee on the managing committee of the appellant - Pathshala Trust along with others. Mr.Parekh submits that this evidence is sufficient to reject the contention of the appellant that respondent No.1 - Trust has no control over it.

29. Mr.Parekh, relying upon various clauses of the Trust Deed and the original constitution of the appellant - Pathshala Trust as well as that of respondent No.1 Mahajan - Trust tried to support the interpretation put by the trial Court with respect to the word "Caste" appearing in the trust deed dated 19th July, 1905. He tried to explain with lucidity that the word "Caste" appearing at all places in the trust deed to suggest that it is used with reference to Mahajan. He, thus, tried to reiterate the interpretation put by the trial Court.

30. Mr.Parekh further submits that at no point of time alleged amended constitution of the appellant - Pathshala Trust was disclosed by them to respondent No.1 - Mahajan Trust or their trustees. He went a step ahead and submitted that even the living trustees of the appellant - Trust did not know anything about the alleged amendment alleged to

have been made to the constitution by the appellant - Trust. He submits that nobody except Mr.Korani was aware of the alleged amendment to the constitution of appellant - Trust prior to the institution of the present suit. In the submission of Mr.Parekh, the alleged amendment is nothing but subsequently created and/or manipulated unilateral act of Mr.Korani. He further submits that in order to support this manipulated act, Mr.Korani has built a false story of amendment and that Mr.Korani went to the extent of manufacturing documents one after another without any knowledge of the other trustees of the appellant - Trust. He submits that all the documents, on which reliance has been placed to establish amendment to the constitution of the appellant - Trust in the year 1995, were subsequently created documents and they were wilfully and deliberately suppressed by Mr.Korani from other trustees and also from respondent No.1 - Mahajan Trust. He further submits that those documents were not only suppressed from the other trustees of the appellant - Trust and their parent Trust, namely, respondent No.1 - Mahajan Trust but Mr.Korani went a step further to twist facts; he fabricated, manipulated and manufactured documents and tried to implant them in the record of the office of the Deputy Charity Commissioner and also

mislead the trial Court as well as this Court. He, thus, strongly urged for dismissal of the appeal with heavy costs to be recovered from Mr.Korani personally.

31. Mr.Parekh, with all forensic skill at his command, tried to demonstrate number of loopholes in the fabricated and fake story sought to be canvased by Mr.Korani representing appellant - Pathshala Trust and submitted that serious view of the conduct of Mr.Korani needs to be taken by this Court. In his submission, Mr.Korani dealt with the Trust property as if it was his personal property and that he tried to handle the office of the Charity Commissioner as his personal office.

32. Lastly, Mr.Parekh submits that elections having taken place the elected body should not be kept out of office. In his submission, the the management and other activities of the appellant - Trust have come to a grinding halt and this situation is being exploited by Mr.Korani for his personal gain at the cost of sacrificing the interest of the Trust. He prayed that the respondents be relieved of their oral undertaking given to this Court that the result of the elections would not be declared and acted upon till such time

appeal is not heard on admission and stay. He, thus, prayed for dismissal of the appeal with heavy costs.

The Issue for Consideration :
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33. Having regard to above, the question that arises for consideration is: whether appellant - Trust herein was able to establish that they were entitled to grant of temporary injunction in the trial Court and, on that count, whether the order of the trial Court is liable to be set aside.

Parameters for grant of Interim Injunction :
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34. Before embarking upon rival contentions and the question that arises for consideration, let me first consider the parameters and conditions for grant of interim injunction. The grant or refusal to grant of injunction is covered by three well established principles viz. (i) whether the petitioner has made out a prima facie case; (ii) whether the petitioner would suffer irreparable injury; and (iii) whether the balance convenience lies in his favour. The burden to prove these three necessities lies on the person seeking injunction. Injunction is not granted to a party guilty of delay

or who is indulged in suppression of facts. The person seeking injunction must approach the Court with clean hands. The Court has to see whether the claim is bonafide and whether there is a fair and substantial question to be tried.

35. With the above parameters, let me consider what should be the relevant consideration while considering the question as to whether or not prima facie case has been made. The Apex Court in the case of **Martin Burn Ltd. v R.N.Banerjee**, AIR 1958 SC 79 held as under:

> "..... While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence let it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence....."
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> (Emphasis supplied)

The settled uniform judicial opinion derived from various precedents can be summarised in the following words:

> "The rule that before the issue of a temporary injunction, the Court must satisfy itself that the plaintiff has a prima facie case, does not mean that the Court should examine the merits of the case closely and come to a conclusion

> that the plaintiff has a case in which he is likely to succeed. this would amount to prejudging the case on its merits. All that the Court has to see is that on the face of it the person applying for an injunction has a case which needs consideration and which is not bound to fail by virtue of some apparent defects. The balance of convenience also has to be looked into." (see AIR 1973 Mad 443 para-12)
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> (Emphasis supplied)

36. In arriving at the balance of convenience, the Court has to weigh the mischief likely to be caused to the applicant, if the injunction is refused. At the same time, it has also to compare the prejudice likely to be caused to the other side, if the injunction is granted.

37. Apart from considering prima facie case and balance of convenience, the Court has also to consider as to whether grant or refusal to grant injunction will cause any irreparable injury to the party to the suit. The injury means a legal injury. A lawful exercise of right cannot be described as an injury. So long as the party is acting in the exercise of a right which the law recognises, it cannot be said that the party is committing any wrong leading to any injury. When as a result of the enquiry in the suit, it is found that the party has not got the particular right, the position would be different, but if on the date of the suit, the

party has got the legal right to do a certain act, that act cannot be regarded as a wrong in law nor would its result be regarded as injury.

38. The Court, while considering grant of the interim injunction, has also to keep in mind that temporary injunction is always granted in the aid of final relief. If the final relief is not available to the person seeking interim relief, then no interim relief can be granted in his favour. The Apex Court in the case of **Cotton Corpn. of India v. United Industrial Bank**, AIR 1983 SC 1272 has held :

> " ..... It is indisputable that temporary injunction is granted during the pendency of the proceeding so that while granting final relief the court is not faced with a situation that the relief becomes infructuous or that during the pendency of the proceeding an unfair advantage is not taken by the party in default or against whom temporary injunction is sought. But power to grant temporary injunction was conferred in aid or as auxiliary to the final relief that may be granted. If the final relief cannot be granted in terms as prayed for, temporary relief in the same terms can hardly if ever be granted. In State of Orissa v. Madan Gopal Rungta 1952 SCR 28 : (AIR 1952 SC 12) a Constitution Bench of this Court clearly spelt out the contours within which interim relief can be granted. The Court said that an interim relief can be granted only in aid of, and as ancillary to, the main relief which may be available to the party on final determination of his rights in a suit or proceedings. If this be the purpose to achieve which power to grant

temporary relief is conferred, it is inconceivable that where the final relief cannot be granted in the terms sought for because the statute bars granting such a relief ipso facto the temporary relief of the same nature cannot be granted....."

(Emphasis supplied)

Consideration :

39. With the aforesaid parameters and principles of grant of injunction, let me turn to the facts and circumstances of the case in hand to examine the legality and validity of the impugned order of the trial Court refusing to grant injunction in favour of the appellant - Trust.

40. At the outset, let me consider various contentions raised by respondent No.1 - Mahajan Trust as regards locus of appellant - Pathshala Trust to file and maintain suit in question. The suit has been filed by the appellant - Trust registered under the Trust Act. The law is well settled that all co-trustees must be joined in filing suit unless the instrument of the Trust otherwise provides. No one single co-trustee even if he be a a managing trustee, unanimously chosen by the co-trustees, can maintain such a suit without other trustees being parties to it. If any one or

more are unwilling to be joined the suit as plaintiff or for some reason or the other it is not possible to join them as plaintiff, they must be impleaded as defendants so that all the co-trustees could be before the Court (see AIR 1934 All 1; AIR 1953 Bom 92; AIR 1963 SC 309; AIR 1973 Guj 113 and 1983 Mh.L.J. 248).

41. Considering the absence of all other co-trustees in the suit, the suit prima facie; is bound to fail on this technical ground. If that be so, can it be said that prima facie case exists in favour of the plaintiff/ appellant - Pathshala Trust. Answer has to be in negative.

42. The respondent No.1 also urged that for want of resolution of the Trust authorising Mr.V.K.Korani to file suit he has no locus to represent the appellant - Trust as such suit is bound to fail. Hence no prima facie case.

43. The provision of section 2(18) of the Trust Act reads as under:

2. Definitions

In this Act unless there is anything repugnant in the subject or context,-

> (18) 'trustee' means a person in whom either alone or in association with other persons, the trust property is vested and includes a manager;

44. This Court in the case of **Shrikrishna v. Ramnarayan**, 1983 Mh.L.J. 248 followed the law laid down in the case of **Vedakannu v. Annadana Chatram**, AIR 1938 Madras 982 wherein it was observed thus:

> . "The general principle of law is that the office of a trustee, irrespective of the number of trustees, is a joint one and co-trustees form, as it were, one trustee and must therefore execute the duties of their office jointly. Hence no suit in regard to trust properties would be maintainable by one or some of the trustees only, if the remaining trustees are not before the Court either as plaintiffs or even as defendants."

45. As held above, the trust properties vest on all trustees. Body of the Trust comprises of all the trustees of the Trust. It is, therefore, apparent that first of all, all the trustees have to decide whether or not suit is to be filed on behalf of the Trust. It has to be a joint or at least decision by majority. It cannot be disputed that the decision of the Trust must be reflected in the resolution passed in a meeting of the managing committee of the Trust. It is only through such resolution the Trust can speak or disclose its mind

that it has decided to file suit and authorised one of its trustees to sign and verify the plaint to appoint or engage leader to represent the interest of the Trust. In the instant case, it is nowhere mentioned in body of the plaint that the suit is being filed in pursuance of any such resolution passed by the managing committee of the appellant - Trust. Nowhere it is mentioned that Mr.V.K.Korani was authorised by all the trustees to represent interest of the Trust and that he is entitled to sign and verify the plaint on behalf of the Trust. Thus, prima facie; suit has been filed without there being any authority in favour of Mr.Korani from the appellant - Pathshala Trust. The suit, thus, suffers from this additional substantial defect.

46. Let me proceed to consider rival contentions on merits for the time being leaving aside the above technical defects in the suit. It is not in dispute that constitution of the appellant - Pathshala Trust, prior to its alleged amendment, did contain provision providing for control and supremacy of respondent No.1 - Mahajan Trust over the appellant - Pathshala Trust. According to the appellant - Trust, this supremacy of respondent No.1 - Trust has been done away as back as in the year

1995 in view of the amendment to their constitution. The question, therefore, hinges upon the existence, legality, validity and proof of the amendment to the constitution of the appellant - Trust said to have been done in the year 1983.

47. Having heard rival parties and having perused their contentions in detail on the above question, in the backdrop of the material available on record, I have no hesitation to prima facie; hold that no such amendment to the constitution of the appellant - Trust was ever made by the appellant - Trust. The story of amendment to the constitution, alleged to have been made in the year 1995, is prima facie; based on false, fabricated, manufactured and engineered documents, the architect of which prima facie; appears to be no other person than Mr.V.K.Korani. He has prima facie; gone to the extent of creating false, misleading evidence and made twisted statements and tampered with the record of the appellant - Trust to project false picture knowing it to be false and misleading with full knowledge to abuse process of law and law Courts. Number of prima facie circumstances backed by concrete material are available on record to justify prima facie; view formed by this Court. Those circumstances are catelogued herein below.

(a) In para-3 of the plaint, plaintiff has alleged that the appellant - Trust is governed by Trust Deed dated 19th July, 1905 and rules and regulations made thereunder. No reference is to be found to the constitution muchless amended constitution of the appellant - Trust. If the amended constitution was to hold the field, what was the necessity to suppress it and rely on the document of 1905.

(b) In para-4 of the plaint, statement is made that the appellant and respondent No.1 are two different Trusts formed under separate documents and governed by their own independent constitutions and rules and regulations with different aims and objects, meaning thereby, that the appellant - Trust is governed by constitution. Again the pleadings are silent as to whether appellant - Trust is governed by amended or unamended constitution.

(c) In para-5 of the plaint, mode of succession of the appellant - Trust to trusteeship is carved out from clause-17 of the Trust Deed dated 19th July, 1905. Again there is no reference to the amended or unamended constitution of the appellant - Trust.

(d) In para-6 of the plaint, a guarded statement is made that the appellant - Trust has filed reports of changes that have occurred from time to time for being recorded in the register of the Bombay Public Trusts without disclosing the nature of changes that have taken place that too without making any reference to the amended part of the constitution.

(e) In para-14 of the plaint, appellant/ plaintiff claimed to have sought direction from the office of the Charity Commissioner regarding two independent Trusts by letter dated 16th June, 2003 and went on to allege in the said letter that, the respondent No.1 attempted to grab control of the administration and management of the appellant - Trust; without disclosing that prior to alleged amendment to their constitution the respondent No.1 - Trust alone had control over administration of the activities of the appellant - Trust.

(f) In para-18 of the plaint, a blatant false statement is made to say that the appointment of trustees of the appellant - Trust is governed by clause-17 of the Trust dated 19th July, 1905 and

that respondent No.1 - Trust has no right to manage, administer the Trust of the appellant, especially, when the appointments of the trustees of the appellant - Trust, right up to the period till the year 2003 were made by respondent No.1 - Trust to the knowledge of Mr.V.K.Korani, who had accepted such appointments and submitted change reports under his own signature under section 22 of the Trust Act to the office of the Deputy Charity Commissioner, Mumbai and on the top of it acknowledged this fact in his letter dated 10th June, 2003 while acknowledging the receipt of letter dated 30th May, 2003 issued by respondent No.1 - Trust. Suppression of fact and attempt to mislead the Court of law is writ large.

48. In the entire plaint, there is absolutely no disclosure as to when the constitution of the appellant - Trust was amended. How many trustees were present in the meeting in which the alleged resolution to amend constitution was adopted. No pleadings are on record with respect to the alleged intimation alleged to have been given to the office of the Deputy Charity Commissioner with respect to the alleged change alleged to have been taken place in the constitution of the Trust. If the entire plaint is scanned the attempt to suppress these

facts from the Court is apparent on the face of record.

49. The amended constitution does not find place in the list of documents. The clauses of unamended constitution reading as under were also suppressed from the trial Court.

"Clause 6(A): Membership - Eligibility

All persons who have become vote member of the mahajan and it continuing as member, can only become member of this institute i.e. Shri C.V.O.D. Jain High School.

Clause 12: Formulation of Committee & its rights and Duties

(2) General committee will considered as the main committee for administration of this institution whereas mahajan will be considered as supreme authority for this institution.

(8) Subject to approval of mahajan additions, alterations or changes can be made in this constitution.

Clause 13: Formulation of Management Committee & its rights and duties

Out of total 20 members as per clause 12(5),

1(d) Two representatives fr Trust Board of Mahajan,

(e) Two representatives fr Managing Committee of Mahajan

(8) This Mahajan shall be informed about all donations received by this institution including gifts of movable and immovable properties.

Clause 16: Formation of Trust Board & its rights and duties

(1) Board of comprising of five members will be formed as per the provision of constitution of mahajan to manage properties and funds of this institution.

(2) Board of trustees will and enjoy rights as provided in clause 13 of Constitution of Mahajan.

Clause 24: Change in Constitution

... moreover, Mahajan can make additions, alterations or changes in the constitution of this institution and same will be binding on this institution.

Clause 26: On activities as well as on funds and properties of this institution supreme authority is that of mahajan and shall always remain hereafter.

Any matter pertaining to this institute, the decision of the mahajan will be final and same will be binding on the General Committee, Managing Committee as well as the Office Bearers of this institution."

50. The alleged deletion of the aforesaid clauses through alleged amendment to the constitution were also not disclosed to the trial Court through the suit filed by the appellant - Trust. It is, thus, prima facie; clear that entire

suit is based on falsehood, suppression of facts, twisted and misleading statements.

51. The letter dated 12th June, 2004 (page 303), whereby alleged change report has been submitted, is a printed letterhead; wherein M/s.Dungarshi S. Mota and Hemraj V. Haria are shown as trustees of the appellant - Trust. This letter-head was used to address the letter to the Deputy Charity Commissioner. The letter appears to have been received by the office of the Deputy Charity Commissioner on 23rd June, 2004. The impugned order of the trial Court under challenge is dated 17th June, 2004. It is, thus, prima facie; clear that under the cover of antedated letter a change report under section 22 of the Trust Act in a prescribed form, for the first time was forwarded to the office of the Deputy Charity Commissioner, Mumbai on 23rd June, 2004 just to create evidence and produce it before this Court during the course of hearing of this appeal. One of the enclosures to the said letter is a purported report of change alleged to have been informed to the office of the Charity Commissioner to report alleged amendment to the constitution of appellant - Trust alleged to have been adopted in the meeting of the Caste alleged to have been held on 4th October, 1995.

52. In the above backdrop, if one turns to the submission advanced by Mr.Abhyankar, learned counsel for the appellant that "Caste" means the entire Jain community of Bombay, then the entire Jain community of Bombay ought to have been served with the notice with agenda of the proposed meeting which was scheduled to be held on 4th October, 1995. At least newspaper publication ought to have been made to invite all the members of the Jain community of Bombay to participate in the meeting. No such evidence is to be seen on record. On the contrary, the minute book, in which the alleged resolution, alleged to have been passed in a meeting of the 'Caste' dated 4th October, 1995, is recorded does not show presence of any member of the Caste muchless other living trustees of the Trust. At the end of minutes the same appears to have been signed by Mr.Champsi H. Tumbdiwala on 17th September, 1996. Subsequent to this meeting, two or three more meetings are shown in the said minutes book but without showing any attendance or presence of any of the trustees or members of the Caste; whereas the same minutes book with respect to the previous meeting previous to 14th September, 1995 is consistently showing presence of the trustees or the invitees invited to attend the meetings. One fails

to understand, how minutes of the meeting can be written without showing presence of the members present in the meeting. There is no answer as to why consistent mode of showing presence of the persons attending the meeting has been done away by Mr.Korani. It is, thus, clear that all these minutes were written without their being any actual meetings held on those dates. The interpretation of the word 'Caste' sought to be canvassed by Mr.Abhyankar cannot be accepted. The appellant - Trust did not act in consonance with their interpretation by inviting all the members of the 'Caste' to attend meeting dated 14th September, 1995. the interpretation and view adopted by the trial Court in this behalf is reasonable and in consonance with the evidence and circumstances available on record. It, thus, deserves acceptance.

53. M/s.Thakore Jariwala & Associates, Advocates and Solicitors appearing for respondent No.1, by their letter dated 15th April, 2004 addressed to Mr.Dinesh T. Gandhi, Advocate appearing for the appellant before the trial Court, had placed on record that pursuant to the time fixed by Mr.Gandhi, Mr.Jariwala along with Ms.Chanda Sonpal, Advocates and their client Mr.Popatlal Shah attended the office of Advocate Mr.Gandhi for

inspection of the documents relied upon by his clients (appellant) and they waited in his office till 6.10 p.m. but no inspection was given to them. Thereafter, Mr.Khairat, representative of the appellant - Trust appears to have appeared in the scene and given inspection of the certified copies of the change reports with certain documents annexed as Item No.1 to the compilation. As far as amended constitution is concerned, the same was shown as annexed to the bunch of papers alleged to have been obtained from the Charity Commissioner on 16th February, 2004. The letter of the Solicitor firm dated 15th April, 2004 further states that the alleged amended constitution was found annexed at the end of the compilation of the certified copies, whereas stamp of certification affixed on previous document i.e. order dated 20th January, 1979 and that the amended part of the constitution did not bear any certification. The amended part of the constitution simply bore a circular or round rubber stamp of the Charity Commissioner thereon without any signature of the authorised signatory. It appears that the Solicitors for respondent No.1 were required to request Mr.Khairat to give inspection of the notice issued of the alleged meeting of the alleged general body of the appellant - Trust in which amended constitution was adopted together with

the copy of the alleged resolution alleged to have been adopted in the alleged general body meeting, if any; with change report by which the alleged change to report allegedly amended constitution was filed with the office of the Charity Commissioner and the approval, if any, granted to it by the Charity Commissioner. It is placed on record that Mr.Khairat informed them that there were no such documents including notice, change report and approval of the Charity Commissioner. This fact finds place in the letter dated 15th April, 2004 placed on record. There is no denial or reply to the said letter from the side of the appellant - Trust or their counsel.

54. Mr.Abhyankar, learned counsel for the appellant, in this Court, during the course of hearing, produce the very same documents, the inspection of which was denied by Mr.Khairat on the ground that documents were not in existence. This Court, therefore, doubted genuineness of the documents produced by Mr.Abhyankar including the covering letter dated 18th January, 1996 under which the alleged change report was submitted to the office of the Charity Commissioner by the appellant - Trust. Though the said covering letter dated 18th January, 1996 shows endorsement of acknowledgement

alleged to have been given by the office of the Charity Commissioner evidencing alleged receipt of the alleged letter and the documents annexed thereto did not inspire judicial confidence on this Court. Therefore, as stated report was called from the Deputy Charity Commissioner vide order dated 15th July, 2004 to verify its genuineness and authenticity. In reply, thereto the report was submitted by the Deputy Charity Commissioner. The relevant part of the said report reads as under:

> " The record and proceedings of the Public Trust named "Shri Cutchi Visha Oswal Derawasi Jain Pathshala Trust." bearing P.T.R.No.e-539 (Bombay) is submitting herewith the report it is further submitted that the last four pages in Gujarathi language is attached with the Record and Proceedings. But there is no trace of the said document how it came to be attached to the Record and Proceedings of this Public Trust as there is no seal as mark of the office of the Charity Commissioner. There is no date on the said document and there is no mention that it is the part which proceeding as the change Report. Hence it is not traceable as to how this document came to be attached to the Record and Proceeding."
>
> (Emphasis supplied)

The Deputy Charity Commissioner also reported that application dated 14th January, 2004 received from Mr.A.S.Khairat requesting for the certified copies of the entire record and proceeding of the appellant

- Trust is available in the office of the Deputy Charity Commissioner whereas another application regarding the very same public Trust received by their office as shown in the inward of certified copies of the documents received on 5th May, 2004 from Advocate Mr.K.P.Jadhav is not traceable in the pending or disposed application for certified copies. One can read number of things in between the lines, but I do not propose to dwell on this aspect any more.

55. Reading of the aforesaid report received from the office of the Deputy Charity Commissioner makes it very clear that one does not know how the last four pages, alleged to be the amended constitution of the appellant - Trust, bearing round rubber stamp of the Charity Commissioner, came to be implanted in the record of the Deputy Charity Commissioner, may be with the assistance of or in connivance with the employee or employees working in the office of the Deputy Charity Commissioner. Otherwise there is no reason for this amended constitution to find place in the record of Deputy Charity Commissioner. This no doubt reflects the misadministration of the office of the Charity Commissioner, Mumbai.

56. The letter dated 18th January, 1996 also does not find place in the record of the office of the Deputy Charity Commissioner. This covering letter dated 18th January, 1996 under which alleged amended constitution along with alleged minutes of the meeting with certified copies of the old constitution and amended constitution alleged to have been submitted to the office of the Charity Commissioner bears reference No.212/95-96. Mr.Parekh pointed out another letter of the same date bearing identical reference number sent by the appellant - Trust to the respondent No.1 - Trust on 18th January, 1996 very much exist on record of this case at pages 257 to 259. This documentary evidence available on record prima facie; makes it clear that letter dated 18th January, 1996 alleged to have been forwarded to the Deputy Charity Commissioner is nothing but a subsequently created document and the reference number is given to the said document to provide colour of genuineness and the same is used by Mr.Korani to mislead this Court. It appears that Mr.Khairat is operating under instructions of Mr.Korani and is a key person working for the appellant - Trust. Mr.Korani representing the appellant - Trust even went to the extent of manufacturing document, viz., letter dated 18th

January, 1996 bearing reference No.212/95-96 addressed to the Deputy Charity Commissioner.

57. There is no explanation coming from the appellant - Trust as to how two letters written on the same date bear identical reference numbers. The manipulation, fabrication and suppression of the facts and documents did not stop here; it went further which can be seen from the facts narrated in the subsequent paras.

58. The appellant - Trust for all the time went on contending before the trial Court as also before this Court that the word "Caste" appearing the the Trust Deed dated 19th July, 1905 is referable to entire Jain community and it does not represent "Mahajan" appearing in the title of respondent No.1 - Trust. This submission is just contrary to the declaration furnished by Mr.V.K.Korani himself as Chairman of the appellant - Trust with the office of the Charity Commissioner on 12th September, 1978; wherein he has, unequivocally, under his signature on oath declared that the rules and regulations pertaining to Shri CVOD Jain High School run by CVOD Jain Pathshala are as per the separate constitution passed in the meeting of the supreme body of the Mahajan (Caste)

held on 22nd February, 1969. The document in this behalf is placed on record at page 306. This document contains clear cut admission on the part of Mr.V.K.Korani that the supreme body is that of "Mahajan". The Caste is with reference to Mahajan. This document was suppressed by Mr.Korani from the trial Court. He tried to canvass just contrary to his own document with full knowledge without disclosing it or without explaining it. the Korani has indulged in wilful suppression of facts.

59. Mr.Korani appears to have written one letter to Mr.R.B.Aragade, then Deputy Charity Commissioner, Bombay on 4th October, 1985, the contents of which are neither disclosed nor the said letter is filed on record. In reply to the said letter Mr.R.B.Aragade, the then Deputy Charity Commissioner, vide his letter dated 18th November, 1985, obliged Mr.V.K.Korani by saying, both the Trusts are separate and that the attempt of respondent No.1 - Trust to amend their scheme is nothing but an attempt to grab control over the management and administration of the appellant - Trust. As a matter of fact, there was no occasion for Mr.Korani to seek clarification nor it was necessary on the part of Mr.Argade, then Deputy Charity Commissioner to express his views without

opening any proceeding or without hearing the trustees of respondent No.1 - Trust. The circumstances suggest that Mr.V.K.Korani had good amount of influence over the then Deputy Charity Commissioner and his office and appears to have obtained clarification just to suit his scheme and design.

60. If one further proceeds to consider the correspondence between the office of the Charity Commissioner and the appellant - Trust, it would be clear that Mr.Korani also had good amount influence over the office of the Charity Commissioner, Mumbai which can be seen from the fact that one letter at page 363 addressed to the Charity Commissioner dated 5th April, 2003 bears acknowledgement evidencing its receipt on 4th April, 2003, a day before the date of the letter.

61. Similarly, there is one more letter dated 16th June, 2003 written by Mr.V.K.Korani to the Deputy Charity Commissioner. Again there is no reference to the amended part of the constitution or the alleged letter dated 18th January 1996 by which the alleged amended constitution was alleged to have been forwarded to the office of the Deputy Charity Commissioner. If one turns to the letter dated 18th

January, 1996 it makes a reference to the minutes of the meeting without specifying the date of the meeting. The minutes of the meeting sought to be relied upon to demonstrate amendment to the constitution of the appellant - Trust, though shown to have taken place on 4th October, 1995 but the minutes appear to have been written and signed on 17th September, 1996. If the minutes itself were written on 17th September, 1996, one fails to understand as to how those minutes came to be forwarded to the office of the Deputy Charity Commissioner on 18th January, 1996. Therefore, it is, obvious, that this covering letter dated 18th January, 1996 sought to be pressed into service, to demonstrate submission of change report along with amended constitution to the office of the Deputy Charity Commissioner is nothing but a false document created to construct false case. The alleged endorsement evidencing alleged acknowledgement of the alleged letter, prima facie; appears to have been managed from the office of the Deputy Charity Commissioner. At the same time, office of the Deputy Charity Commissioner also appears to have obliged Mr.Korani by making necessary endorsement of acknowledgement or receipt on the said letter.

62. On being asked the office of the Deputy Charity Commissioner submitted his report to say that no such letter is to be found in their record. Therefore, prima facie; it appears that this document was manufactured by Mr.V.K.Korani only for the purpose of the present litigation so as to contend that the appellant - Trust is free from supervision, management and control of the respondent No.1 - Trust.

63. Mr.Korani, under his signature, appears to have forwarded one letter dated 16th June, 2003 to the office of the Deputy Charity Commissioner to seek clarification. None of the documents referred to in the said letter are to be found in the sets of documents produced on record either by the appellant - Trust or the office of the Deputy Charity Commissioner, Mumbai. The Deputy Charity Commissioner by his letter dated 18th November, 2003 again obliged Mr.Korani, by replying to his aforesaid letter to reiterate that the earlier explanation given by their office should be treated as reply to his letter. He did not verify existence of old correspondence. He did not go through the same. He did not apply his mind to find out as to what is the factual matrix of the matter. One fails to understand how the Deputy Charity Commissioner

from time to time went on advising the appellant - Trust behind the back of other trustees of the Trust without opening any proceeding under the provisions of the Trust Act. It is, thus, clear that the letters written by the office of the Deputy Charity Commissioner from time to time to the appellant - Trust can hardly have any evidenciary value or legal standing.

64. Two trustees of the appellant Trust, namely, Mr.Mota and Mr.Haria both of them have filed affidavits on record stating on oath that at no point of time any meeting for amending constitution of the appellant - Trust was called and at no point of time any such meeting has taken place. There is no counter affidavit to these affidavits from side of the appellant - Trust to counter these allegations.

65. Mr.Parekh, learned counsel for respondent No.1 rightly submitted that in spite of repeated requests no documents were produced by the appellant before the trial Court to demonstrate any amendment to its constitution. No document with respect to the alleged resolution alleged to have been passed in the alleged meeting dated 4th October, 1995 was produced in the trial Court. Change report

proceedings were initiated after the order of the trial Court planting certain seeds of old correspondence alleged to have taken place so as to give colour of some genuineness to the old non-existing documents. All these documents were produced before this Court for the first time. He further rightly pointed out that the statement made by Mr.Korani on oath, in his affidavit dated 10th August, 2004, in para-7 (page 286), to say that he had produced in the City Civil Court copy of the resolution dated 4th October, 1995 passed by the appellant - Trust with the copies of the change report and the covering letter dated 18th January, 1996 together with copy of letter dated 8th April, 2003 received from respondent No.1 to the appellant - Trust as well as copies unamended and amended constitution of the appellant - Trust are absolutely false and Mr.Korani is liable to be prosecuted for having committed an act constituting an offence of perjury and contempt of Court. When this portion of the affidavit was pointed out by Mr.Parekh, naturally, Mr.Abhyankar was called upon to justify this statement having noticed absence of such documents in the record and proceeding forwarded by the trial Court. He submitted that the said documents were never produced before the trial Court. Mr.Abhyankar frankly admitted that the said

statement is an incorrect statement. In the circumstances, it absolutely clear that Mr.V.K.Korani, who has affirmed this affidavit, has no regard for truth. At all stages, as pointed out hereinabove, he not only tried to mislead other trustees of his own Trust; the office of the Deputy Charity Commissioner and the trial Court, but, even tried to mislead this Court. This Court was compelled to seek report from the office of the Charity Commissioner not once but twice, that too, because of the false and incorrect submissions of the appellant knowing it to be false, misleading and twisted. At this juncture, it would be profitable to refer to the judgment of the Apex Court in the case of **Dhananjay Sharma v. State of Haryana**, AIR 1995 SC 1795; wherein the Apex Court has observed as under:

> " Any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the concerned party in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery

> by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in Courts aims at striking a blow at the Rule of law and no court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statement and fabricating false evidence in a court of law."

66. In the aforesaid backdrop and in the totality of the facts and circumstances of the case, I absolutely have no hesitation to record finding that no prima facie case has been made out by the appellant - Trust. There is no balance of convenience in their favour. No irreparable injury would be suffered by them, if injunction is refused to it. As a matter of fact, in my opinion, if the person like Mr.V.K.Korani is allowed to manage the Trust in the capacity of the trustee by indulging in the act of preparing, manufacturing and creating false documents, then one fine morning one may find that the entire Trust and its properties are

highjacked by persons like Mr.Korani. It will be in the interest of the appellant - Trust to at least continue to be under the control of the Mahajan Trust looking to the situation emerging from the facts of the present case. No legal injury would be suffered by the appellant if no injunction is granted to it. In the circumstances, the view taken by the trial Court is perfectly justified. This is a fit case; wherein the trial Court has done justice to the appellant - Trust and its properties by rejecting application for interim injunction.

67. There are number of documents and circumstances available on record which have prima facie; exposed misdeeds of Mr.V.K.Korani, an architect of the present frivolous litigation. However, it is not necessary to discuss the same as the material already considered and discussed herein is sufficient to decide this appeal from order.

68. In the result, appeal is dismissed for the reasons recorded herein as well as the reasons given by the trial Court with costs quantified in the sum of Rs.25,000/- to be borne by Mr.V.K.Korani personally (not from the account of the appellant - Trust). The amount of costs to be deposited with the trial Court for being paid to respondent No.1 -

Trust within two weeks from today. In the event of non-payment of costs, respondent No.1, with the assistance of the trial Court, would be at liberty to take appropriate steps in accordance with law.

69. The trial Court is directed to try the suit in question in due course treating it as normal litigation according to its seniority in accordance with law without getting influenced by any of the observations made herein as they are prima facie.

70. At this stage, Mr.Abhyankar, learned counsel for the appellant - Trust prayed that the effect and operation of this judgment be stayed and respondent No.1 - Trust be not relieved of their undertaking referred to in para 32 of this judgment as the appellant - Trust intends to approach Apex Court. This request made by Mr.Abhyankar is opposed by Mr.Parekh, learned counsel for respondent No.1 - Trust. Having considered the rival submissions, I do not think this a fit case wherein prayer made by Mr.Abhyankar can be granted for the reasons recorded in the judgment. Prayer for stay made on behalf of appellant - Trust, thus, stands rejected. The respondent No.1 - Trust is relieved of their oral undertaking referred to in para-32 of this judgment.

71. At this stage, the parties to the appeal requested for necessary orders with respect to retention or return of documents filed by the appellant - Trust during the course of hearing. It is, therefore, necessary to issue certain directions in this behalf.

72. As already referred to in paras- 14 and 15 (supra), one letter bearing No.212/1995-96 dated 18th January, 1996 bearing inward endorsement of the office of the Deputy Charity Commissioner along with one bunch of documents said to have been certified copies of entire proceedings in respect of the appellant - Trust issued by the office of the Deputy Charity Commissioner under the signature of Superintendent (J), Public Trusts Registration Office, Mumbai said to have been certified on 16th February, 2004 accompanied with four printed zerox pages bearing round seal of the office of the Deputy Charity Commissioner purported to be the amended copy of the constitution of the appellant - Trust without bearing any certificate thereon be retained as part of the appeal record and be kept in sealed cover for being remitted to the trial Court after 90 days from today which the trial Court shall retain on its own record of the suit.

73. A bound minutes book was produced during the course of hearing referred to in para-52 (supra) be returned to the appellant - Trust in the event of request in that behalf is made subject to their furnishing notarised zerox copies of the minutes of the meeting dated 4th October, 1995 signed by Mr.Champsi H. Tumbdiwala on 17th September, 1996 on record of the trial Court and on furnishing undertaking that the said minutes book would be produced during the course of hearing in the trial Court, if ordered by the Court. So far as rest of the original documents produced during the course of hearing are concerned, the parties can withdraw the same after making proper application to the Registrar General, subject to production of notarised copies thereof.

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